(3)

C.S.1007

IN THE HIGH COURT OF JUDICATURE CHHATTISGARH AT BILASPUR

W.P NO 2088 /2004

PETITIONER: Ramesh Kumar Sahu
S/o Late Chait Ram Sahu
aged 51 years,
R/o Behind Airtel Office
Narayan Chaat Gali
Sarga Bagicha, Bilaspur
Chhattisgarh

: VERSUS :

RESPONDENTS:

1. Chhattisgarh Infrastructure Development Corporation Ltd. Through: Its Secretary Transport Division D K S Bhawan, Raipur(CG)
2. Chhattisgarh State Industria Court, Raipur(CG)
3. The Presiding Officer, Labour Court, Bilaspur(CG)

P. R. No. 2132/04
Presented by Shri G. P. Tiwari
dated 20-7-04

PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2088 of 2004

Petitioner — Ramesh Kumar Sahu

Versus

Respondents — Chhattisgarh Infrastructure Development Corporation Ltd. & others

Post for order on 6th July, 2006.

Sd/-
Satish K. Agnihotri
Judge
5.7.2006

(114)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 2088 of 2004

Petitioner : Ramesh Kumar Sahu

Versus

Respondents : Chhattisgarh Infrastructure Development Corporation Ltd. & others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri P.S. Koshy, Advocate with Shri Vinod Deshmukh, Advocate for the Petitioner.

Shri Ashok Das Vaishnav, Advocate for the Respondent No. 1.

O R D E R

(6th July, 2006)

1. The present petition filed under Article 226/227 of the Constitution of India challenges the validity of the order dated 13.7.2004 (Annexure P/1) passed by the Industrial Court/respondent No. 2 in Appeals No.529/MPIR Act/91 and 569/MPIR Act/91.

2. The undisputed facts, in nutshell, are that the petitioner was appointed as Conductor in the erstwhile Madhya Pradesh State Road Transport Corporation on 9.5.1983 and was posted at Bilaspur Depot. The petitioner was served with the charge-sheet (Annexure R/7) for having committed misconduct under Section 12 (1) (B) (D) of the Standing Orders by permitting 40 passengers to travel without tickets between Sargaon to Bilaspur on 12.9.1990. The charge-sheet was issued by the Depot Manager (Enquiry), Bilaspur. The enquiry was conducted by the same officer i.e. Depot Manager (Enquiry), Bilaspur.

3. Consequently, by order dated 31.7.1991 (Annexure R/12), the petitioner was dismissed from service by the same person i.e. Depot

(115)

Manager (Enquiry), Bilaspur without issuing show cause notice and without supplying a copy of the enquiry report.

4. Being aggrieved, the petitioner moved an application under Section 31 (3) of the Madhya Pradesh Industrial Relations Act, 1960 before the Labour Court. The Labour Court, after having considered all the facts, came to the conclusion that the enquiry was ex-parte and the petitioner was not given sufficient opportunity of hearing. The petitioner was permitted to examine one of the management witnesses and the petitioner was further not permitted to lead his evidence in support of his case. In view of that, the Labour Court by order dated 24.9.1991 (Annexure P/2) found that the order of termination was illegal and improper and accordingly, directed the respondent No. 1 to reinstate the petitioner on the post of the Conductor without back wages.

5. The petitioner being aggrieved, by refusal to grant back wages, filed appeal before the Industrial Court being Appeal No. 529/MPIR Act/91. The respondent No. 1 also filed an appeal against the order of reinstatement being Appeal No. 569/MPIR Act/91. The Industrial Court, after having considered the cases of both the parties, by common order dated 13.7.2004 (Annexure P/1) held that the petitioner has collected the money to the tune of Rs. 160/- from the passengers and defalcated the same deliberately. Hence, the order of the Labour Court dated 24.9.1991 (Annexure P/2) was quashed and the impugned termination order dated 13.7.2004 (Annexure P/1) was held valid and legal.

6. Shri P.S. Koshy, learned counsel appearing for the petitioner submits that the petitioner was not afforded opportunity of hearing and the enquiry was proceeded ex-parte. Learned counsel for the petitioner further submitted that the petitioner was not granted opportunity to

(116)

examine his witnesses and to cross examine one of the witnesses of the management. Learned counsel next submitted that the petitioner was present throughout in the enquiry proceedings which started on 17.10.1990, except on few occasions on the ground of unavoidable circumstances. The petitioner was present on 4.7.1991 when the enquiry officer fixed the matter on 19.7.1991 for evidence. On 19.7.1991, the petitioner could not make himself available due to unavoidable circumstances. The enquiry officer proceeded ex-parte, declining the opportunity of hearing to the petitioner and closed the enquiry for orders. Action of the enquiry officer to proceed ex-parte under such circumstances amounts to denial of fair-play in action. It was next contended that the Disciplinary Authority, Depot Manager (Enquiry) himself was the charge-sheeting officer, enquiring officer, presenting officer and disciplinary authority. The enquiring officer could not have acted as presenting officer. It amounts to violation of principles of natural justice and causes prejudices against the petitioner. The prosecutor cannot be a judge. The conduct of the disciplinary authority by performing all the duties himself as charge-sheeting officer, enquiring officer, presenting officer and disciplinary authority clearly indicates that there was a personal animosity against the petitioner.

7. Shri Ashok Das Vaishnav, learned counsel appearing for the respondent No. 1, per contra, submits that the petitioner was given sufficient opportunity of hearing. The petitioner remained absent on 19.7.1991, so the proceedings against the petitioner was just and valid. It is admitted by learned counsel for the respondent No. 1 that out of two witnesses, examined by the management, one was cross examined by the petitioner. The petitioner could not be given opportunity to cross examine the second witness and to examine his

(117)

witness in support of his case on 19.7.1991, as the petitioner remained absent from the proceedings. The petitioner is estopped from raising the issue of violation of principles of natural justice as the petitioner absented himself on the date fixed for evidence. It was next contended that the disciplinary authority was competent to act as a charge-sheeting officer, enquiring officer, presenting officer as well as the disciplinary authority and this does not prejudice the case of the petitioner, particularly, in view of the fact that the petitioner was caught red handed. The petitioner permitted 40 passengers traveling without tickets from Sargaon to Bilaspur for about 10 kilometers. This amounts to breach of trust. The said conduct of the petitioner falls within the purview of gross misconduct under Section 12 (1) (B) (D) of the Standing Orders. Hence, the punishment of dismissal from service is just and proper.

8. I have heard learned counsel for the parties and perused the records appended to the petition and return. It is evident that the petitioner was present in the course of the enquiry on 4.7.1991. The matter was adjourned and fixed for further evidence on 19.7.1991 when the petitioner could not make himself available for the enquiry. The enquiring officer proceeded ex-parte without granting even one adjournment enabling the petitioner to participate in further enquiry for cross examination of the management witness and for adducing his evidence. It is further established that the charge-sheeting officer, enquiring officer, presenting officer and disciplinary authority was one the depot manager (enquiry), Bilaspur.

9. The question for consideration is whether the ex-parte proceedings of the enquiry on 19.7.1991 in absence of the delinquent employee petitioner amount to violation of principles of natural justice and denial of fair-play in action. It is the case of the respondents/employer

that the enquiry report was prepared by two inspectors on the basis of spot inspection of the bus on 12.9.1990, wherein 40 passengers were found without holding proper tickets. Explanation of the petitioner that the petitioner was in the process of issuing tickets and he could not issue tickets to 40 passengers, though the bus had already travelled for about 10 kilometers. However, in the facts and circumstances of the case, when the petitioner was not afforded proper opportunity of hearing, the enquiry report and thereafter the termination order dated 31.7.1991 (Annexure R/12) cannot be held as legal and just.

10. Be that as it may, since the petitioner was not given sufficient opportunity of hearing and the right of the petitioner to lead the evidence was closed, when the petitioner remained absent on the next date of hearing i.e. 19.7.1991. It the circumstances, it is a clear case of violation of principles of natural justice and as such it is unnecessary to go into the merits of other contentions raised.

11. The Supreme Court in the case of **Town Area Committee, Jalalabad Vs. Jagdish Prasad and others** (AIR 1978 Supreme Court 1407) observed in para 1, as under :

> "1. .....It may not have been necessary to apply the provisions of Art. 311 of the Constitution strictly, nevertheless the principle of audi alteram partem had to be complied with. A reasonable opportunity is a term of well known legal significance and includes an opportunity given to the employee to cross examine the witnesses examined against him and to lead defence in support of his version....."

12. In the case of **Kuldeep Singh Vs. Commissioner of Police and others** {(1999) 2 Supreme Court Cases 10), the Supreme Court in para 32 held, as under:-

(119)

> "32. Apart from the above, Rule 16(3) has to be considered in the light of the provisions contained in Article 311(2) of the Constitution to find out whether it purports to provide reasonable opportunity of hearing to the delinquent. Reasonable opportunity contemplated by Article 311(2) means "hearing" in accordance with the principles of natural justice under which one of the basic requirements is that all the witnesses in the departmental enquiry shall be examined in the presence of the delinquent who shall be given an opportunity to cross-examine them. Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down by this Court is that a copy of that statement should first be supplied to the delinquent who should thereafter be given an opportunity to cross-examine that witness."

13. In view of aforementioned reasons and dicta laid down by the Supreme Court, the impugned termination order dated 31.7.1991 (Annexure R/12) is set aside and the respondents are granted liberty to hold a fresh enquiry. In view of the fact that the impugned termination order has been set aside on the ground of violation of principles of natural justice, no amount of back wages is directed to be paid.

14. Accordingly, the order dated 24.9.1991 (Annexure P/2) of the Labour Court to the extent of reinstatement without back wages is confirmed and the impugned order dated 13.7.2004 (Annexure P/1) passed by the Industrial Court/respondent No. 2 in Appeals No.529/MPIR Act/91 and 569/MPIR Act/91 is set aside and the writ petition is allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge